IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

Bail Appl..No. 7564 of 2007()

CRIME NO. 361/07 OF CHADAYAMANGALAM POLICE STATION
CRMP.3689/2007 of D.C. & SESSIONS COURT,KOLLAM

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PETITIONERS/A1 TO A4

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1. SUNIL (AI),S/O.LAKSHMANAN ASSARI,
SUSHAMA VILASAM VEEDU,MULAYAKKONAM,NILAMEL.

2. AJMUDEEN (A2),S/O.SHAMSUDEEN,
POIKAVILA VEEDU,MULAYAKKONAM,NILAMEL.

3. SHAFEER (A3),S/O.SHAHUL HAMEED,
SHAJEER MANZIL,MULAYAKKONAM,NILAMEL.

4. VIJU CHELLAPPAN (A4),S/O.CHELLAPPAN,
VANDIPPURAYIL VEEDU,MULAYAKKONAM,NILAMEL.

BY ADV. SRI.ALAN PAPALI
SRI.M.REVIKRISHNAN

RESPONDENTS:

STATE OF KERALA (CRIME NO.361/07 OF
CHADAYAMANGALAM POLICE STATION),REPRESENTED BY
THE PUBLIC PROSECUTOR,HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. NO. 7564 of 2007

Dated this the 13th day of December, 2007

ORDER

Application for regular bail. The petitioners are accused 1 to 4. Altogether, there are four accused persons. They face allegations in a crime which was initially registered, inter alia, under Sec.302 of the IPC. In the course of investigation, the Section of offence has been altered to Sec.304 of the IPC. Investigation is in progress. Final report has not been filed yet.

2. The crux of the allegations against the petitioners is that they were proceeding on two motor-cycles on the evening of 31/10/07. They allegedly picked up a quarrel with some others at a bus waiting shed near the place of occurrence in this case. About that incident, another crime has later been registered. After the incident in that case, the four petitioners herein were moving away from the said scene of the crime in two motor-cycles. Allegedly on receiving information from the persons, who were involved in that incident at the bus waiting

shed, the deceased in this case and others came on to the road and allegedly wanted to obstruct the escape of the accused persons. There, it is alleged that the deceased was knocked down and attacked by the petitioners who were proceeding on two motor-cycles. The deceased and others with him suffered injuries. The deceased succumbed to his injuries. Accused No.2 was arrested on 1/11/07. In fact, the Case Diary shows that he was intercepted and detained at the scene of the crime itself by others. Accused No.3 was arrested on 2/11/07 and accused Nos.1 and 4 were arrested on 12/11/07. They continue in custody from those dates.

3. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. After the incident in the earlier scene, they were going away from the scene. They were victims of aggression even in that first incident. While they were trying to go away from the scene, the deceased in this case and some others tried to obstruct them and attack them. They, who were passing on the motor-cycles, were intercepted and the motor-cycles were pushed down leading to the fall of the petitioners. Apprehending danger to them, they took to their heels. The deceased who had come to the scene of the

occurrence with the intention of attacking them had fallen in the course of the incident and had suffered injuries. In any view of the matter, the petitioners cannot be said to be liable for any offence under Sec.302 or Sec.304 of the IPC, submits the learned counsel for the petitioners. The petitioners, who have remained in custody from the dates referred above, may now be enlarged on bail, submits the learned counsel for the petitioners.

4. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the petitioners with the deliberate intention of attacking the victim and knocking him down had hit him with the motor-cycle and had indulged in the acts of violence against him. The petitioners and the victim belong to two different political parties. A tense law and order situation prevails in the locality. In these circumstances, the petitioners may not be released on bail at this stage of the investigation. If the courts were inclined to grant regular bail to the petitioners, some further time may be granted to the Investigator to complete the investigation. The presence of the petitioners at the scene of the crime may be excluded by appropriate directions in the interests of maintenance of law and order in the locality.

5. I have considered all the relevant inputs. As the reasons which prompted the Investigating Officer to alter the Section from Sec.302 to Sec.304 of the IPC was not very clear to this Court, the learned Public Prosecutor was requested to place the Case Diary to make detailed submission. I am yet to find satisfactory reasons for the Investigating Officer to reduce the Section of offence from Sec.302 to Sec.304 of the IPC at this stage of the investigation. That subtle discretion should normally not be exercised by the Investigating Officer at this early stage of the investigation. Be that as it may, I take note of the totality of the circumstances in this case. I am of opinion that subject to appropriate conditions which shall allay the apprehension aired by the learned Public Prosecutor and safeguard the interests of a fair, efficient and expeditious investigation, the petitioners can be granted regular bail subject to conditions.

6. **In the result:**

(a) This application is allowed. The petitioners shall be released on bail on the following terms and conditions:

(i) The petitioners shall not be released from custody on

the strength of this order prior to 27/12/2007. The Investigator shall, in the meantime, make every endeavour to complete the investigation.

(ii) The petitioners shall execute bonds for Rs.1,00,000/- (Rupees one lakh only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(iii) The petitioners shall make themselves available for interrogation before the Investigating Officer on all Mondays and Fridays between 10 a.m. and 12 noon for a period of three months from the date of their release from custody and thereafter as and when directed by the Investigating Officer in writing to do so.

(iv) During the said period of three months, the petitioners shall not enter the jurisdiction of Chadayamangalam Police Station without the prior permission of the learned Magistrate, except for the purpose of complying with Condition No.(iii) above.

7. The learned counsel for the petitioners submits that accused No.4 wants to attend a meeting of the Nilamel Grama Panchayat for election of its President at 11 a.m. on 17/12/2007. He prays that appropriate directions may be issued to ensure

that he is able to participate in the said meeting.

8. There shall be a direction that the petitioner No.4/ accused No.4 shall be permitted to attend that meeting with necessary police escort. Arrangement to that effect shall be made by the Superintendent of the Sub Jail, Kottarakkara.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge